

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST;
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE
FUND; DISTRICT COUNCIL 37, AFSCME -
HEALTH & SECURITY PLAN; JUNE
SWAN; MAUREEN COWIE and BERNARD
GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation; and McKESSON
CORPORATION, a Delaware corporation,

Defendants.

C.A. No. 1:05-CV-11148-PBS

**PLAINTIFFS' MOTION FOR THREE-WEEK EXTENSION TO FILE THEIR REPLY
BRIEF IN SUPPORT OF THEIR AMENDED MOTION FOR CLASS CERTIFICATION**

Plaintiffs seek leave of Court for a three-week extension of the deadline to file their reply brief in support of their Amended Class Certification Motion. Plaintiffs have consulted with McKesson regarding their request but have not received a clear response whether McKesson assents to or opposes Plaintiffs' motion.¹ Plaintiffs are amendable to a reciprocal extension for McKesson to file its surreply.

Plaintiffs request this extension to allow Plaintiffs' expert, Raymond S. Hartman, sufficient time to respond to the expert report McKesson submitted in support of its opposition

¹ Declaration of Steve W. Berman in Support of Plaintiffs' Motion for Three-Week Extension to File Their Reply Brief in Support of Their Amended Motion for Class Certification, ¶ 2.

brief. Dr. Hartman has several concurrent commitments in other litigation matters which make it very difficult for him to address all of the issues raised by the 78-page expert report submitted by McKesson within the allotted time. A modest, three-week extension is necessary to allow Plaintiffs' expert to respond to the conclusions of McKesson's expert.²

Dr. Hartman's time commitment in the next six weeks is staggering. He is a consulting expert in a Zyprexa off-label promotion case, *UFCW Local 1776, et al. v. Eli Lilly & Co.*, No. 05-cv-4115-JBW (E.D.N.Y.). Plaintiffs' report in support of class certification is due on February 12. Dr. Hartman is assisting plaintiffs' named expert, Dr. Rosenthal, with the econometrics that form the basis of the showing of impact, liability and the calculation of damages. He expects this effort will involve much of his time through filing.³

Dr. Hartman is also scheduled to testify in Philadelphia one day this week or next in a personal injury case involving Premarin.⁴

Additionally, Dr. Hartman is the plaintiffs' named expert in *In re Neurontin Mktg., Sales Practices & Prods. Liab. Litig.*, No. 04-cv-10981-PBS, MDL No. 1629 (D. Mass.). Defendants in that case submitted the declarations of three experts opposing class certification. Dr. Hartman's rebuttal declaration to all three is due to the court on February 21.⁵

Further, Dr. Hartman is scheduled to appear before the U.S. Court of Federal Claims in a matter relating to a breach of contract by the U.S. Department of Energy regarding storage of nuclear waste at Yucca Mountain. The appearance is scheduled for one to two days over the

² *Id.*, ¶ 9.

³ *Id.*, ¶ 4.

⁴ *Id.*, ¶ 5.

⁵ *Id.*, ¶ 6.

period of February 22 through 26. Prior to that appearance he will need to prepare demonstrations and do trial runs.⁶

Finally, Dr. Harman is a consulting expert in *Sheet Metal Workers Local 441 Health & Welfare Plan v. GSK*, No. 04-cv-5898-BWK (E.D. Pa.). Plaintiffs' expert declaration is due in late March and Dr. Hartman is assisting the named expert to prepare his declaration.⁷

McKesson would not be prejudiced by the requested extension. Plaintiffs are open to allowing McKesson a reciprocal three-week extension. Moreover, the modest adjustment Plaintiffs now seek might not have been necessary if McKesson had not refused to answer interrogatories Plaintiffs served in September, requesting that it state the basis for its opposition to class certification. As this Court is well aware, Plaintiffs originally filed their motion to certify in July and only recently amended the motion in late December to include a proposed Consumer Class. That left McKesson essentially six months to prepare its opposition. Had McKesson responded last October to Plaintiffs' interrogatory requests, Plaintiffs could have guided their expert through the relevant evidence and clarified in advance the issues to be addressed in his rebuttal declaration. By refusing Plaintiffs' reasonable request, McKesson unnecessarily obscured the disputed issues on the merits of Plaintiffs' class certification brief.⁸

Plaintiffs have conferred with opposing counsel regarding their proposed modification of the Court's briefing schedule, but were unable to reach an agreement regarding an extension.

Plaintiffs' proposed order is attached as Exhibit A. Plaintiffs request that the Court's scheduling order of December 11 be amended as follows:

⁶ *Id.*, ¶ 7.

⁷ *Id.*, ¶ 8.

⁸ *Id.*, ¶ 2.

Plaintiffs' Reply Brief in Support of their Amended Class Certification Motion is due on
March 18, 2007.

DATED: February 7, 2007

By /s/ Steve W. Berman

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CERTIFICATE OF SERVICE

I, Steve W. Berman, hereby certify that a true and correct copy of the above document was served on the attorney of record for each party via the Court's electronic filing system this 7th day of February, 2007.

By /s/ Steve W. Berman
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EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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**[PROPOSED] ORDER GRANTING PLAINTIFFS A THREE-WEEK EXTENSION TO
FILE THEIR REPLY BRIEF IN SUPPORT OF CLASS CERTIFICATION**

IT IS HEREBY ORDERED as follows:

1. The Court's December 11, 2006 scheduling order is amended.
2. Plaintiffs' Reply in Support of their Amended Class Certification Motion is due March 18, 2007.
3. Defendant may file its Surreply no later than _____2007.
4. The hearing on the motion, scheduled for April 12, 2007, is reset for May __, 2007.

DONE this _____ day of February, 2007.

HONORABLE PATTI B. SARIS
United States District Court

CERTIFICATE OF SERVICE

I, Steve W. Berman, hereby certify that a true and correct copy of the above document was served on the attorney of record for each party via the Court's electronic filing system this 7th day of February, 2007.

By /s/ Steve W. Berman
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